YONG WEE MING

v.

CHIN THIAN GUAN

FEDERAL COURT, KUALA LUMPUR
ABDUL HAMID OMAR FJ
GEORGE SEAH FJ
HASHIM YEOP SANI FJ
[CIVIL APPEAL NO. 317 OF 1982]
15 AUGUST 1983

LAND LAW: *Trusts - Declaration of - Torrens System - Doctrine of constructive notice - Caveat to preserve status quo pending legal action.*

In this case, the respondent was the registered proprietor of Lot 458 Mukim Tampin Tengah and had executed a memorandum of transfer of the said lot to one Tan Tock Sing for valuable consideration. Tan proceeded to subdivide the lot into 8 shoplots and charged all 8 shoplots to a finance company in November 1979. Over a year later, Tan entered into a Sale and Purchase Agreement with the appellant for the sale of all 8 shoplots free of all encumbrances. Before the registration of (i) the discharge and (ii) the memorandum of transfer by Tan to the appellant, the respondent lodged a private caveat against all eight shoplots declaring that he was the true owner of the said shoplots which were merely held on trust by Tan. The appellant as the party aggrieved by the existence of the caveat applied to the Seremban High Court under s. 327 (1) National Land Code 1965 for the removal of the caveat and failed. The appellant appealed.

Held:

[1] The indefeasibility of title under the Torrens System cannot be defeated by

(a) setting up the fiction of a trust

(b) advancing the principles of constructive notice.

[2] However, in this case, the respondent's claim of the existence of a trust is not baseless nor frivolous in the light of evidence such as a letter supposedly written by Tan, declaring the alleged trust, which indicates a serious question to be tried.

[3] As such, the caveat is permitted to remain to preserve the *status quo* until hearing of the action.

[Appeal dismissed.]

Cases referred to:
Abigail v. Lapin [1934] AC 491
Assets Co. Ltd. v. Mere Roihi [1915] AC 204
Eng Mee Yong & Ors. v. V. Letchumanan [1979] 2 MLJ 212

Legislation referred to:
National Land Code 1965, s. 327(1)

For the appellant - F.S. Chong; M/s. Azam-Malek & Soh
For the respondent - H. Ball; M/s. Humfrey Ball

JUDGMENT

George Seah FJ:

On 26 August 1971 Chin Thian Guan, the registered proprietor, executed a memorandum of transfer of Lot 458 Mukim Tampin Tengah held under EMR 412 in favour of Tan Tock Sing for a stated consideration of dollars thirty thousand only (RM30,000) and this transfer was duly registered at Tampin Land Registry Office on 29 October 1971. Subsequently, Tan Tock Sing subdivided Lot 458 into eight shoplots now known as HS(M) No. 1-80 for PT No. 1081 to HS(M) No. 8-80 for PT No. 1088, Mukim Tampin Tengah and charged all the eight shoplots to Tong Bee Finance (Malaysia) Berhad to secure a loan, on or about 2 November 1979. And on 23 December 1981 Tan Tock Sing entered into a Sale and Purchase Agreement in writing with Yong Wee Ming who agreed to buy all the eight shoplots free from all encumbrances and with vacant possession for the sum of dollars three hundred and twenty thousand only (RM320,000). Before the registration of (a) the memorandum of discharge of charge executed by Tong Bee Finance (Malaysia) Berhad and (b) the memorandum of transfer of the eight shoplots signed by Tan Tock Sing, Chin Thian Guan lodged a caveat against all the eight shoplots and the caveat was entered on the register on 8 April 1982 as private caveat No. 26/82. In the statutory declaration verifying the nature of the claim Chin Thian Guan stated that "I am the owner of the said lands referred to above which were held in trust for me by Tan Tock Sing". Yong Wee Ming, a person aggrieved by the existence of the caveat, applied under s. 327(1) of the National Land Code 1965 to the High Court at Seremban for the removal of the said caveat but the application was dismissed with costs. This is an appeal by Yong Wee Ming (hereinafter referred to as the appellant) against the decision of the learned Judge. The respondent in this appeal is Chin Thian Guan, the caveator.

Lord Wright in *Abigail v. Lapin* [1934] AC 491 at p. 500 said:

> No notice of trusts may be entered in the register book but it has long been held that equitable claims and interests in land are recognized under the Real Property Acts. This was held by *Barry v. Heider* [1914] 19 CLR 197 and in *Great West Permanent Loan Co. v. Friesen* [1925] AC 208; for the protection of such equitable interests or estates, the Act provides that a caveat may be lodged with the registrar by any person claiming as *cestui que* trust, or under any unregistered instrument or any other estate or interest; the effect of the caveat is that no instrument will be registered while the caveat is in force affecting the land, estate or interest until after a certain notice to the person lodging the caveat. Thus, though the legal interest is in general determined by the registered transfer, and is in law subject only to registered mortgages or other charges, the register may bear on its face a notice of equitable claims, so as to warn persons dealing in respect of the land and to enable the equitable claimant to protect his claim by enabling him to bring an action if his claim be disputed ...

In the case of *Assets Co. Ltd. v. Mere Roihi* [1915] AC at p. 204 Lord Lindley said:

> Then it is contended that a registered owner may hold as trustee and be compelled to execute the trusts subject to which he holds. This is true, for, although trusts are kept out of the register, a registered owner may not be beneficially entitled to the lands registered in his name. But if the alleged *cestui que* trust is a rival claimant, who can prove no trust apart from his own alleged ownership, it is plain that to treat him as a *cestui que* trust is to destroy all benefit from registration. Here, the plaintiffs set up an adverse title and nothing else; and to hold in their favour that there is any resulting or other trust entitling them to the property is, in their Lordships' opinion, to do the very thing which registration is designed to prevent. Their Lordships cannot give effect to this ingenious arguments addressed to them on this point; nor can they adopt the case of *Solicitor-General v. Mere Tini* 17 NZLR 773 as an authority which ought to be followed in these appeals.

In other words, the principle of indefeasibility of title conferred by registration under the Torrens System cannot be defeated by setting up the fiction of a trust or by applying the principles of what has been called constructive or equitable notice. However, in our opinion, the dictum of Lord Lindley can be distinguished from the present appeal in that quite apart from his own assertion of ownership the respondent also produced a letter allegedly written by Tan Tock Sing on 3 March 1979 declaring the alleged trust. To use the words of Lord Diplock in *Eng Mee Yong & Ors. v. V.Letchumanan* [1979] 2 MLJ 212 the learned Judge was justified in holding that the claim of the respondent against Tan Tock Sing, the registered proprietor, is not baseless, frivolous or vexatious; in other words the affidavit evidence before the Court discloses that there is a serious question to be tried. Before dismissing the application the learned Judge ordered the respondent to file a suit against Tan Tock Sing within one month from date thereof and on the balance of convenience, the learned Judge was satisfied that in order to maintain the *status quo* the said caveat should remain until the trial of this action. We see no reason to differ from the conclusion reached by the learned Judge. For the above reasons we dismiss the appeal with costs and the deposit to be paid to the respondent to account of taxed costs.

Also found at [1983] 2 CLJ 210